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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,441	05/31/2001	Steven J. Rychnovsky	17858/120103	8892

7590

09/04/2002

Roxana Wizorek  
Bryan Cave LLP  
211 North Broadway, Suite 3600  
St. Louis, MO 63102

EXAMINER

HENLEY III, RAYMOND J

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 09/04/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/871,441**

Applicant(s)  
**Steven J. Rychnovsky**

Examiner  
**Ray Henley**

Art Unit  
**1614**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 6) ☐ Other:

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**CLAIMS 1-57 ARE PRESENTED FOR EXAMINATION**

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Applicant's Information Disclosure Statement filed May 31, 2001 has been received and entered into the application. As reflected by the attached, completed copy of form PTO-1449, the cited references have been considered.

***Claim Rejection - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al. (U.S. Patent No. 6,054,449), Lamuraglia (WO 01/24825 A2) or Allison (WO 01/35997 A2).

Robinson et al., Lamuraglia or Allison teach a method of PDT treatment of cardiovascular indications associated with occlusions (see Robinson et al. at the abstract and column 4, lines 55-56; Lamuraglia at the abstract; and Allison at the abstract) which comprises administering a photosensitizer drug which is encompassed by the present claims and which may not be a psoralen compound (see Robinson et al. at Figures 1-29, column 2, Table 1 and column 6, lines 10-67; Lamuraglia at page 16, line 16 - page 33, line 15; and Allison at the

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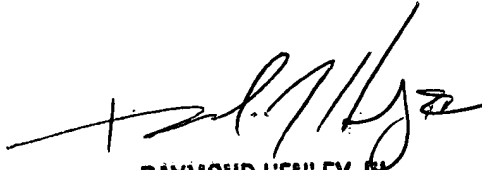
abstract) and delivering an intravascular photoactivating light to the blood vessel at an activation wavelength that is encompassed by applicant's range of "about 390 to about 610 nm" (see Robinson et al. at column 23, line 56; Lamuraglia at page 2, lines 29 and 32; and Allison at page 13, lines 20-24).

The difference between the above and applicant's claimed subject matter lies in that the prior art fails to report a molar extinction coefficient of the photosensitizer drug at the activation wavelength of at least  $1000 \text{ L cm}^{-1} \text{ M}^{-1}$ .

However, the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains because such coefficient is a physical characteristic of the photosensitizer drug and would have been present whether highlighted in the prior art or not.

Accordingly, for the above reasons, the claims are deemed to be properly rejected and none of the claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ray Henley whose telephone number is (703) 308-4652.



RAYMOND HENLEY, III  
PRIMARY EXAMINER  
GROUP 1000

Henley; rjh  
September 3, 2002